

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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| ILLINOIS COMMERCE COMMISSION |) | |
| On its Own Motion |) | |
| |) | Docket No. 13-0553 |
| vs. |) | |
| |) | |
| COMMONWEALTH EDISON COMPANY |) | |
| Investigation of tariffs approved in |) | |
| Docket No. 13-0386 |) | |

STATEMENT OF POSITION OF
THE PEOPLE OF THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“the People” or “AG”), and pursuant to the request of the Administrative Law Judges, hereby file their Statement of Position in the above-captioned proceeding, consistent with the Initial Brief filed by the People on November 1, 2013 and the Reply Brief filed by the People on November 6, 2013.

I. INTRODUCTION / STATEMENT OF THE CASE

A. Procedural History

On May 31, 2013, ComEd filed a Verified Amended Petition to its April 29, 2013 Formula Rate Petition in Docket No. 13-0318, incorporating the changes produced in the Revised Formula Rate Tariff and creating a new proposed revenue requirement to take effect January 1, 2014. ComEd noted in its Petition that the Revised Formula Rate Tariff, if implemented, would “govern how the 2014 Rate Year Net Revenue Requirement, and (subject to future amendment) all subsequent revenue requirements under EIMA formula ratemaking, will be determined.” ComEd Amended Petition, filed May 31, 2013, at 4.

In response to the Company’s petition, the People filed a Complaint requesting that the Commission open an investigation in order to correct ComEd’s (1) use of year-end rate base in

the Company's calculation of the return on equity ("ROE") collar computation; (2) grossing up of the WACC interest rate on the reconciliation under-recovery balance; (3) failure to reflect the accumulated deferred income taxes ("ADIT") on the reconciliation under- or over-recovery as part of its calculation of the reconciliation under- or over-recovery; and to (4) establish the just and reasonable rates pursuant to the formula modifications requested in the Complaint that result from those modifications make that modification and the other modifications requested in this complaint docket no less than 30 days before the entry of the January 1, 2014 rates to be set in Docket 13-0318.¹ ICC Docket No. 13-0511, AG Complaint at 1.

Shortly after filing that Complaint, the Commission opened the instant docket for the specific purpose of investigating these changes to the ComEd formula rate tariff revenue requirement approved on June 5, 2013. *See* Initiating Order of October 2, 2013.

B. Legal Standard

The People contend that the Revised Formula Rate Tariff approved by the Commission included formula rate provisions that were overbroad, and improperly changed provisions of the formula that P.A. 98-0015 did not address or authorize. P.A. 98-0015 made specific formula rate tariff changes in subsections (c) and (d) of Section 16-108.5, including:

16-108.5(c)(2) The formula shall reflect the utility's actual year-end capital structure for the applicable calendar year, excluding goodwill, subject to a determination of prudence and reasonableness consistent with Commission practice and law.

16-108.5(d)(1) Actual revenue requirement for the prior rate year determined using a year-end rate base;

16-108.5(d)(1) Interest on actual revenue requirement for the prior rate year calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year;

Subsection (k) set out the procedure for changing the utility's formula rate tariff to incorporate the changes made to subsections (c) and (d). 220 ILCS 5/16-108.5(c), (d) and (k).

¹ *See* 220 ILCS 5/16-108.5(c)(6) ("Any change ordered by the Commission shall be made at the same time new rates take effect ... provided that the new rates take effect no less than 30 days after the date on which the Commission issues an order adopting the change.")

Subsection (k) also specifies that the tariff changes resulting from the P.A. 98-0015 amendments “shall relate only to, and be consistent with, ... paragraph (2) of subsection (c) regarding year-end capital structure, subparagraph (D) of paragraph (4) of subsection (c) regarding pension assets, and subsection (d) regarding the reconciliation components related to year-end rate base and interest calculated at a rate equal to the utility’s weighted average cost of capital.” 220 ILCS 5/16-108.5(k).

II. P.A. 98-0015 COMPLIANCE

The Company’s calculation of the ROE collar adjustment and grossing up of the WACC interest rate on the reconciliation under-recovery are not authorized by P.A. 98-0015 or by other EIMA provisions and the Company’s failure to recognize the ADIT on the reconciliation under-recovery prior to application of the WACC interest is contrary to fundamental and well-established Article IX ratemaking principles. Without the modifications to the Revised Formula Rate Tariff recommended herein, ComEd will continue to collect revenues that do not reflect the Company’s actual costs, resulting in customer rates that are not just and reasonable under sections 9-101 and 16-108.5(c) of the PUA and are not consistent with the goals of EIMA to base rate on “actual costs.”

A. Do The Tariffs Filed On May 30, 2013 By ComEd Correctly Calculate Interest On ComEd's Reconciliation Balance As Authorized By The Public Utilities Act?

1. ComEd’s Additional Gross-Up of the WACC Interest Rate Contradicts the Plain Language of EIMA.

The People presented evidence that the Company’s method of grossing up the WACC interest rate applied to the reconciliation balance in fact violates Section 16-108(d). Section 16-108.5(d) of the Act lays out the terms of the reconciliation process under formula rate regulation, as well as the rate of interest to be applied to any reconciliation under-recovery or over-recovery calculated in the annual formula rate update proceeding. Under that section of the Act, the Commission is required to compare the calculation of the prior calendar year revenue requirement, using recorded input data as reported on the Company’s FERC Form 1, to the corresponding previously approved revenue requirement for that same period. 220 ILCS 5/16-108.5(d)(1). The Company is then required to either refund or surcharge this difference in revenue requirement to ratepayers in the annual formula rate update proceeding, plus interest.

Section 16-108.5(d)(1) of the Act, as amended by P.A. 98-0015, now requires that “[a]ny over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, *with interest calculated at a rate equal to the utility’s weighted average cost of capital approved by the Commission for the prior rate year*, the charges for the applicable rate year.” 220 ILCS 5/16-108.5(d)(1) (emphasis added). ComEd, however, calculated interest at a rate equal to its WACC *grossed-up for the assumed effect of income taxes*, resulting in an increase to WACC from 6.91% to 9.67%.²

The People point out that all of the Staff and Intervenor accountants reviewing ComEd’s calculation of the interest applied to the reconciliation balance in this docket, including Staff witness Bridal, AG witness Brosch and IIEC/City/CUB witness Gorman, agreed that ComEd’s decision to gross up its WACC for the assumed effect of income taxes is wrong both from an accounting and reasonableness standpoint.³ As noted above, nothing in Section 16-108.5(d) refers to or permits any gross up of the utility WACC when computing the reconciliation balance interest rate, and the amendments to EIMA authorized by P.A. 98-0015 certainly did not permit this. The language of the statute, as noted above, simply references application of the utility WACC as the *interest* rate applicable to the reconciliation over- or under-collection, and does not permit the use of the much higher “Total Revenue Effect of Return” now being proposed by ComEd. *See* 220 ILCS 5/16-108.5(d)(1).⁴

The People presented detailed argument in their Initial and Reply Briefs demonstrating that ComEd’s approach is based on the mistaken premise that “interest calculated at a rate equal to the utility’s weighted average cost of capital” is the same as funding based on the mix of debt and equity that funds rate base. Aside from the fact that it is not correct to treat *interest* as if it has an equity component⁵, if the statute had intended that the over- or under-collection be added

² *See* ICC Docket No. 13-0318, ComEd Ex. 3.18, Schedule FR D-1, line 25, with the caption, “Total Revenue Effect of Return.” The Company’s 9.67 percent value is then carried forward to the reconciliation Schedule FR A-4 at line 2, where it is used to compute “Interest” in column (F) of that Schedule. *See also* AG Ex. 1.0R at 5-6.

³ Staff Ex.1.0 at 3-4; AG Ex. 1.0 at 5-9; IIEC/City/CUB Ex. 1.1 at 4-5.

⁴ AG Ex. 1.4 Corrected contains an edited version of Schedule FR D-1 omitting lines below line 21 that ComEd used to improperly factor-up the WACC for assumed income tax effects.

⁵ This is primarily because interest and equity have different income tax effects. *See* AG Ex. 3.0 at 2.

to rate base and subject to both an equity and an interest component, the revised statute would have said so. It does not. Therefore, adding an income tax expense factor-up in the manner proposed by ComEd does not reflect the true income tax effect of interest costs, and recovery is inconsistent with fundamental regulatory and accounting principles and overstates the required rate of interest by charging ratepayers for assumed incremental income taxes on equity return amounts that does not represent expenses that ComEd actually incurs. 220 ILCS 5/16-108.5(d)(1). While P.A. 98-0015 changed the rate of interest rate applied to the reconciliation under- or over-collection, it did not alter the application of interest into complex accounting applying assumed but non-applicable income tax impacts to such a “rate”.

Unless adjustments are made to the Company’s calculations in Schedule FR D-1 in Dockets 13-0386 and 13-0318, ratepayers will pay excessive interest for alleged income tax expense effects that the Company is not incurring, as demonstrated in greater detail in the People’s testimony and briefs in this docket.

2. It Is Unnecessary For ComEd To Gross Up The WACC Interest Rate In Order For ComEd To Fully Recover Its Actual Reconciliation Costs.

The People also note that the Company has not justified its intention to gross up the WACC interest rate in order to fully recover its actual reconciliation costs. As demonstrated in the People’s testimony and briefs, it is neither necessary nor appropriate to “gross up” the interest rate to recover the costs of equity financing of the reconciliation under-recovery. An interest rate does just that, as it is a percentage value to account for the time value of money. AG Ex. 1.0R at 7. The People also demonstrated that ComEd’s position represents an attempt to bootstrap the use of the “weighted average cost of capital” in other parts of the formula rate calculation to the reconciliation calculations. *Id.* The “weighted average cost of capital return on rate base” that is allowed the utility in determining formula revenue requirements is not “interest” but rather reflects a blend of interest cost recovery and an opportunity to earn an authorized level of net income equal to the weighted cost of equity applied to rate base – a point ComEd witness Brinkman did not dispute. Tr. at 29. In contrast, the reconciliation balance is required to earn only an interest allowance and not a rate base return factored up for the equity-related income tax allowances. AG Ex. 3.0 at 7.

It is also important to note that that ComEd will *not* actually pay income taxes when it collects “interest” as part of the recovery of the reconciliation balances.⁶ As the Company incurs interest expense equal to its weighted average cost of capital when reconciliation balances are being financed, there would be no income tax expense incurred by ComEd because “interest” is income tax deductible. AG Ex. 3.0 at 7. In fact, ComEd acknowledges the income tax deductibility of interest expense. See ComEd Ex. 1.0 at 14. It is not necessary to recognize additional tax costs associated with the *equity* component of the financing as ComEd asserts. ComEd Ex. 1.0 at 14-15 (emphasis added). Rather, as pointed out by AG witness Brosch, the specification of an interest rate equal to WACC does not mean that equity and associated income tax costs should be assumed to be incurred. The specification of an interest rate equal to WACC is not the same as specifying that equity costs should be applied to the reconciliation under-collection. AG Ex. 3.0 at 4-5. ComEd infers that P.A. 98-0015 mistakenly used the word “interest” and that the law actually intended to provide for a composite return allowance that includes both a debt and an equity component, in the form routinely allowed for rate base. The plain language of Section 16-108.5(d)(1) belies that assumption. Therefore, the People contend that ComEd wrongly assumes that the Company is allowed recovery of an equity return rather than simply a rate of interest under EIMA.

The People also noted that the grossing up the interest rate for income taxes has no precedent. Notably, in the Company’s own earlier formula rate filings in Docket No. 11-0721 and 12-0321, ComEd did *not* gross-up its proposed WACC interest rate (in Docket No. 11-0721) nor the approved short-term debt interest rate included within Docket No. 12-0321 formula rate protocols. Tr. at 22. The first time the new income tax gross-up calculation appeared was in ComEd’s Revised Formula Rate Tariff filed on May 30, 2013. Adjusting the interest rate for the purported impact of income taxes was never mentioned in any of the direct testimonies of ComEd witnesses in Docket No. 11-0721 nor in Docket No. 12-0321. In addition, the Company could identify no change in law that has occurred since the 11-0721 and 12-0321 dockets that would justify the gross up methodology ComEd has applied, or where in the Commission’s 11-0721 Order such a gross up was authorized. Tr. at 22, 26. The People also note the significance of the fact that Ameren Illinois Company (“AIC”) did *not* gross up its calculation of the WACC

⁶ As calculated on Schedule FR A-4.

reconciliation interest rate in its revised formula rate tariffs filed after the passage of P.A. 98-0015.

Unless adjustments are made to the Company's calculations in Schedule FR D-1, ratepayers will pay excessive interest for alleged income tax expense effects that the Company is not incurring and that are not appropriate or intended under P.A. 98-0015.

B. Do the tariffs filed on May 30, 2013 by ComEd correctly calculate the Section 16-108.5(c)(5) return on equity ("ROE") collar as authorized by the Public Utilities Act?

The People contend that ComEd's proposed calculation of the collar adjustment underestimates the Company's return on equity, resulting in a smaller collar adjustment, thus increasing the net revenue requirement, to the benefit of ComEd shareholders and the detriment of ratepayers. The people, therefore, urge the Commission to correct this inequity now, in order to ensure that rates for the next several years of formula ratemaking are set correctly.

1. P.A. 98-0015 did not authorize use of an end of year rate base in the ROE collar calculation.

The Company proposes to use the rate base as of the end of the 2012 reconciliation year for the purpose of calculating the delivery service common equity balance and fixed cost capital balances.⁷ That is, the Company uses the *actual* rate base as of December 31, 2012, based on the 2012 FERC Form 1 to quantify the balance of common equity used in the ROE computation and the interest and preferred dividends used in the quantification of the net income available for common equity. As noted by AG witness Effron, rather than the end-of-year rate base, the average rate base for the year should be used in the calculation of the earned ROE for the purpose of the collar calculation. AG Ex. 2.0R at 4-5.

The People note that the use of year-end rate base for calculating the ROE collar is without precedent. In Commonwealth Edison dockets 11-0721 and 12-0321, and Ameren Dockets 12-0001 and 12-0293, the Commission determined that in order to reflect the actual costs incurred by the utility in the reconciliation year, the formula rate template should use the average rate base for calculating the reconciliation year rev req. *See, e.g.*, Docket 12-0001, Order of September 19, 2012 at 174-175; Docket No. 12-0321, Order of December 19, 2012 at 4.

⁷ Schedule FR A-3 of ComEd Exhibit 1.03 presents the Company's calculation of the earned return on equity ("ROE") in 2012 for the purpose of quantifying the ROE collar adjustment.

The People also note that use of year-end rate base results in inconsistency. As AG witness David Effron testified in this docket, “[t]he net income used in the ROE calculation is the income earned over the course of the year, not the annualized net income being earned at the end of the year. To be consistent, the common equity balance used in the denominator of the ROE calculation should be the average balance of common equity over the course of the year.” AG Ex. 2.0R at 4.

Importantly, the changes to P.A. 98-0015, as detailed in the People’s Initial Brief and Reply Brief⁸, do *not* address the ROE collar computation. Rather, the ROE collar computation is described in a different Subsection: 16-108.5(c)(5). Unlike Subsection 16-108.5(d) which addresses the calculation and treatment of the utility’s expenses and revenue requirement, Subsection 16-108.5(c)(5) addresses the Company’s actual profitability. When Section 16-108.5(d) was amended this past spring to specify that the reconciliation revenue requirement should be calculated using an end-of-year rate base, the section describing the ROE collar, Section 16-108.5(c)(5), was not changed to specify the use of an end of year rate base calculation of the collar adjustment. Under statutory interpretation rules, when certain things are enumerated in a statute, that enumeration implies the exclusion of all other things even if there are no negative words of prohibition. *See People ex rel. Daley v. Grady*, 548 N.E.2d 764, 766 (Ill. Ct. App. 1989). When an act lists things to which it refers, the court may infer that any omissions were intended as exclusions. *Bank of Waukegan v. Kischer*, 246 Ill. App. 3d 616, 620 (1993).

2. Using A Year-End Rate Base In the Calculation of the Utility’s Earned ROE Overstates the Actual Capital Supplied by Equity Investors to Support the Company’s Rate Base Over the Course of the Year.

The People contend that ComEd’s decision to extend the very specific changes authorized by the General Assembly in P.A. 98-0015 to the calculation of the ROE collar results in unjust and unreasonable rates. In order to produce a dollar balance that correctly represents the actual capital supplied by equity investors to support the Company’s rate base over the course of the year for which the ROE is being calculated, the common equity ratio must be applied to an average rate base. To be consistent, the common equity balance used in the

⁸ AG Initial Brief at 20-22; AG Reply Brief at 18-20.

denominator of the ROE calculation should be the average balance of common equity over the course of the year. AG Ex. 2.0R at 4-5. The People's recommendation results in an accurate statement of earned ROE and consistency in calculation.

The People point out in detail in their Initial and Reply Briefs⁹ that ComEd's own Exhibit 1.04 demonstrates why the use of a year-end rate base in the ROE collar calculation understates the actual earned ROE when the year-end rate base is greater than the average rate base. In order to avoid such understatement of the earned ROE, the average rate base should be used in the collar calculation.

The purpose of calculating the ROE collar using average rate base is to avoid treating the debt and equity as of the end of the year as if it had been in existence for the whole year, as ComEd's calculation does. AG Ex. 2.0R at 5-6. Using the year-end capital structure simply means that the common equity ratio will be applied to the average rate base rather than to the year-end rate base. The People's approach maintains the year-end relationship between debt and equity, but applies it to the growth of investment over the course of the year. AG Ex. 2.0R at 5-6. In short, the use of an average rate base in the ROE collar calculation simply ensures that the calculation of the utility's returns should reflect the actual capital invested in the enterprise over the period for which the return is calculated.

AG witness Effron provided a detailed discussion of how the ROE collar computation should be modified to reflect the Company's actual capital supplied by equity investors to support the Company's rate base over the course of the year for which the ROE is being calculated. AG Ex. 2.0R at 6-7. Incorporating Mr. Effron's well-supported use of an average rate base in the ROE collar calculation results in a 2012 ROE of 9.75% (AG Ex. 2.1, page 1 of 2, Sch. FR A-3-DJE). This leads to an ROE collar adjustment on Schedule FR A-1 of \$(25,308,000) (AG Ex. 2.1, page 2 of 2, Sch. DJE-3) as compared to the Company's ROE collar adjustment of \$(6,395,000), with the amounts in parentheses signifying earnings in excess of the collar's range. Thus, this adjustment results in a reduction to the Net Revenue Requirement on Line 36 of Schedule FR A-1 in Docket No. 13-0318 of \$18,913,000, exclusive of any interest. This calculation is reflected in Mr. Effron's Ex. 2.1, pages 1 and 2 (DJE-3), attached as Appendix B.

⁹ AG IB at 26; AG RB at 22.

The People urge the Commission to adopt this adjustment in order to ensure that the Company's reported earnings for purpose of the collar calculation are not understated, thereby depriving ratepayers of the requisite collar reduction to the Company's 2014 net revenue requirement.

C. Do the tariffs filed on May 30, 2013 by ComEd correctly reflect the appropriate tax treatment in calculating interest on the reconciliation balance in the formula rate tariff as authorized by the Public Utilities Act?

The People note that EIMA provides for an annual reconciliation process that allows the electric utility to reconcile the revenue requirement set for the prior year with actual costs incurred in that year, and to either apply a surcharge or a credit to consumers' bills to provide the utility with "what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the time of filing." 220 ILCS 5/16-108.5(c)(6). In addition, the reconciliation provisions of EIMA provide for the utility to collect interest on the reconciled revenue requirement as follows:

Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior year, the charges for the applicable rate year.

220 ILCS 5/16-108.5(d)(1)(emphasis added).

Both AG witnesses Brosch and Effron, and IIEC/City of Chicago/CUB witness Michael Gorman took issue with the Company's calculations of interest upon the reconciliation under-recovery in the formula rate docket and they carry these identical concerns to the Commission's investigation in this docket.¹⁰ It is undisputed that accumulated deferred income taxes ("ADIT") associated with the reconciliation process exist. The Company's position is that these ADIT balances should be ignored in applying interest and also ignored in determining rate base, a position that conflicts with fundamental ratemaking practices and fairness toward ratepayers.

¹⁰ See ICC Docket No. 13-0318, AG Ex. 1.0 at 18-19; AG Ex. 2.0 at 15-18; IIEC/City/CUB Ex. 1.0 at 4-5.

1. The deferral in the payment of income taxes is a real cash benefit and should be recognized in the calculation of interest on the reconciliation balances.

According to the People's witnesses, the reconciliation reveals an under-recovery during the 2012 calendar year because ComEd collected fewer revenues than the revenue requirement authorized by the Commission's Order in Docket No. 12-0321. AG Ex. 2.0 at 9; AG Ex. 1.0 at 9-10. Consequently, the Company paid less in income taxes in 2012 than it would have paid had the higher revenue requirement been collected in cash, which is income taxable. As a result, the reconciliation balance must be reduced by the temporary income tax savings associated with the lower revenue level to determine ComEd's *net* cash investment in the reconciliation balance. ComEd pays income taxes only on its cash revenues when they are collected by the utility. If the recovery of reconciliation surcharge revenue is delayed, then it follows that the payment of related income taxes is also delayed. AG Ex. 1.0 at 9. ComEd witness Brinkman concurred. Tr. at 59-60.

ComEd's 2012 revenue requirement was under-recovered and reconciliation revenues are to be later collected from ratepayers, causing the Company to record an incremental *deferred* income tax liability associated with the amounts owed by and recoverable from ratepayers. These deferred income tax liabilities *reduce* the incremental capital ComEd actually has invested in the reconciliation under-recovery, because the reconciliation revenues that were recorded but not recovered in providing service are not currently recognized as taxable for income tax purposes. Given the lower after-tax investment required from investors because of these income deferral benefits, the amount of interest properly applied to the reconciliation under-recovery should be reduced by the avoided cash income tax payments. Interest should only apply to the *net-of-tax* reconciliation balance to reflect the incremental capital investment driven by the over or under-recovery of revenues. This ensures, in this case, that rates are not excessive, or, when reconciliations produce credit balances, insufficient. AG Ex. 1.0 at 10.

Deferrals of this type of income tax expense have the effect of reducing the amount of capital investment ComEd must make in support of the reconciliation revenue requirement that has not yet been recovered. Full and complete accounting for income tax expenses recognizes that income taxes often impact expenses payable in more than one accounting period. AG Ex. 2.0 at 9. The delayed collection of reconciliation revenues under formula ratemaking creates a "taxable temporary difference" under these rules. This occurs because the utility pays taxes on

revenues actually received in the reconciliation year rather than on the revenue level indicated in the reconciliation balance. AG Ex. 1.0R at 13. Reconciliation revenues are recorded as per book revenues in the reconciliation year (either as excess or deficiency revenues) while such revenues will not become income taxable until the year they are approved by the Commission and charged or credited to ratepayers.

The People note that the record evidence confirms that there are deferred income tax effects directly attributable to the reconciliation balance. ComEd did not actually pay income taxes in 2012 for revenues it did not collect in 2012 but will collect in 2014. Tr. at 59-60. Therefore, ComEd has no interest expense related to those (not-yet-paid) taxes. Application of interest to only *the net of income tax* reconciliation under- or over-recovery is consistent with the economic reality that the utility does not pay income tax due to the delay in the recovery of taxable revenues and reduces the overall interest burden upon ratepayers by about 40 percent. AG Ex. 1.0R at 11. Netting ADIT from the reconciliation over- or under-recovery likewise can benefit the utility. For example, when a reconciliation over-recovery occurs, offsetting applicable deferred income taxes against the reconciliation amount on which interest is accrued is of benefit to the utility, because the utility is then required to credit customers for interest on only the net source of funds provided by the over-recovery. AG Ex. 2.0 at 10.

The Company is able to deduct all allowable costs incurred to provide service to customers in the reconciliation year on its reconciliation year income tax returns, which reduces the taxable income for that year. AG Ex. 3.0 at 9. However, a portion of the accrued revenues recorded by ComEd, to reflect its entitlement to later recovery of reconciliation revenues, are not currently taxable. The impact of this imbalance between higher deductible costs relative to somewhat lower taxable revenues because the reconciliation revenues are not currently taxable, causes ComEd to have the use of non-investor supplied funds in the form of income tax deferrals. *Id.*

ComEd is allowed under formula ratemaking to earn interest while waiting to collect the accrued reconciliation revenues, while at the same time deferring the payment of income tax expenses on such recoveries. This tax deferral benefit effectively reduces the Company's after tax cash flows by about 41 percent of the accrued reconciliation revenues. *Id.*

2. Reducing the Reconciliation Over- or Under-Recovery for ADIT is consistent with language of Section 16-108.5(d)(1) and the Public Utilities Act as a whole

Section 16-108.5(d)(1) provides that “[a]ny *over-collection or under-collection* indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility’s weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year.” 220 ILCS 5/16-108.5(d)(1) (emphasis added). This statutory provision does *not* say, as ComEd’s and Staff’s interpretation suggest, that the interest should be applied to only the full, gross amount of the “reconciliation balance.” The reference to the “over-collection or under-collection” clearly references the cash flow amount associated with ComEd’s 2012 revenue collection. This is not a rote, gross subtraction calculation that does not reflect ComEd’s actual costs avoided (including income tax payments avoided) incurred during the 12-month period being reconciled.

A fundamental principle of statutory construction is to view all provisions of a statutory enactment as a whole, with each provision construed in connection with every other section. *Roselle Police Pension Bd. v. Village of Roselle*, 232 Ill.2d 546, 552 (2009). This concept of allowing interest only on the actual, net-of-tax under- or over-collection is consistent with the entire EIMA statute. *See, e.g.*, Section 16-108.5(c) (“A participating utility may elect to recover its delivery services costs through a performance-based formula rate approved by the Commission, which shall specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that *reflects the utility's actual costs* to be recovered during the applicable rate year, ...”); and Section 16-108.5(c)(6) (“The performance-based formula rate approved by the Commission shall... [p]rovide for an annual reconciliation, as described in subsection (d) of this Section, with interest, of the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement would have been had *the actual cost information* for the applicable calendar year been available at the filing date.”) (Emphasis added.)

The People note that while the statute could have directed the Commission to apply interest to the full reconciliation “balance” – the term ComEd insists on using throughout its

testimony and arguments -- it did not. This provision only authorizes interest on the “over-collection or under-collection” indicated by such reconciliation. 220 ILCS 5/16-108.5(d)(1). This requires the Commission to determine the actual over- or under-collection, taking into consideration the cash flow effect of the formula rate process. The Commission should apply interest to the utility’s *actual* cash costs in 2012 to conform to the legislative intent that the reconciliation reflects “the actual cost information for the applicable calendar year.” 220 ILCS 5/16-108.5(d)(1). The utility pays income taxes on the revenues it receives, and the amount of taxes actually paid by the utility in a given calendar year depends on the revenues *actually* received. Thus, regardless of whether the reconciliation revenue requirement is larger or smaller than that in effect during the year, the determination of the actual cash over- or under-collection indicated by the reconciliation will be affected by the timing of the payment of the income taxes, as noted above.

Moreover, the absence of a specific reference to taxes in connection with the over-collection or under-collection indicated by such reconciliation does not mean that the effect of reconciliation ADIT amounts should be ignored. The effect of deferred income taxes is plainly incorporated into the revenue requirement. ADIT is routinely considered as part of rate base in the Company’s formula rate updates; the Appendices to the Commission’s Orders in Docket Nos. 12-0001 and 12-0293 contain extensive treatment of the Company’s ADIT.¹¹

In reviewing Commonwealth Edison’s first formula rate filing, the Commission commented on the need to apply basic accounting principles in implementing the formula rate and to consider the effect of ADITs even in the absence of a specific direction in the statute and concluded that “*If the Commission were to ignore ADIT on ComEd’s plant investments, we would be ignoring basic accounting principles and appellate precedent*” and further opined that “...One would expect that, after the General Assembly treated so many issues with specificity that it would have specifically excluded ADIT in the statute, if that were its intent. It did not.” Docket 11-0721, Order at 59-60 (May 29, 2012).

The effect of deferred income taxes is considered by all parties on many issues despite the absence of specific direction to consider ADIT or taxes. This is because, as the Commission

¹¹ See, e.g., Docket No. 12-0001, Appendix to Order, September 19, 2012, Page 1 Line 19, Page 2 Line 19, Page 3 Line 19, Page 4 Line 18, Page 5 Line 18, and Page 6 Line 7. See also Docket No. 12-0293, Appendix to Order, December 5, 2012, Page 1 Line 19, Page 2 Line 19, Page 3 Line 19, Page 4 Line 18, Page 5 Line 18, and Page 6 Lines 9, 13, and 16.

concluded in Docket 11-0721, basic accounting principles as well as Illinois caselaw recognize that ADIT should be treated as a source of non-investor funds, and the General Assembly did not direct the Commission to ignore this fundamental regulatory and accounting principle.

III. IMPLEMENTATION OF RATE FORMULA CHANGES, IF ANY

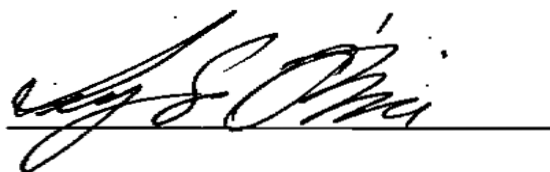
Based on the testimony filed, it appears that there is no dispute regarding as to whether any changes authorized in this docket to ComEd's Amended Formula Rate Tariff changes rates both prospectively and retrospectively. All such changes, including any retroactive effect on the ROE collar calculation and on the reconciliation, should be reflected in the Company's rates as of January 1, 2014.

IV. CONCLUSION

For the foregoing reasons, the People of the State of Illinois request that the Commission issue an order consistent with the positions stated in this Statement of Position.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
By Lisa Madigan, Attorney General

A handwritten signature in black ink, appearing to read 'K. Lusson', is written over a horizontal line.

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